MEMORANDUM DECISION

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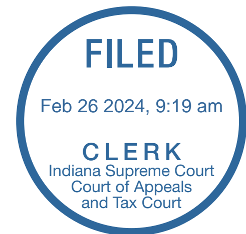
IN THE

Court of Appeals of Indiana



Rachel Laud,

Appellant-Defendant

v.

Joe Witvoet and Cathy Witvoet,

Appellees-Plaintiffs

February 26, 2024

Court of Appeals Case No.
23A-PL-2215

Appeal from the Lake Superior Court

The Honorable Rehana R. Adat-Lopez, Judge

Trial Court Cause No.
45D10-1909-PL-596

Memorandum Decision by Judge Mathias
Judges Tavitas and Weissmann concur.

Mathias, Judge.

[1] Rachel Laud appeals the trial court's judgment for Joe and Cathy Witvoet following a bench trial.[1] Laud raises three issues for our review, which we consolidate and restate as the following two issues:

> 1. Whether the trial court found that the parties had entered into a contract.
>
> 2. Whether the trial court's judgment for the Witvoets amounts to a collateral attack on a prior decree of dissolution entered in another cause between Laud and her former husband.

[2] We affirm.

Facts and Procedural History

[3] In December 2012, Joe and his brother, William Witvoet, purchased forty continuous acres of land in Lake County as joint tenants with rights of survivorship. Joe and William agreed that twenty acres would belong to Joe and his wife, Cathy, and the other twenty acres would belong to William. Although Joe and William had equally split the down payment for the land, because William had bad credit Joe secured a loan backed by a mortgage for the balance of the purchase price, approximately $224,000, in his name only.

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[1] Sam Witvoet, Laud's co-defendant, does not participate in this appeal.

[4] In September 2013, William died, and his son, Sam, inherited William's twenty acres. At the time, Sam was married to Laud. Joe divided the forty acres into the respective twenty-acre parcels and quit-claimed Sam's twenty acres over to Sam. However, as Sam and Laud also had bad credit, they were unable to refinance their twenty acres, and, to avoid foreclosure on the whole forty acres, Joe continued making payments on the original loan, which Joe had to later renew. Between 2013 and November 2016, Sam and Laud paid $27,942.10 to Joe to contribute to the loan payments for the forty acres.

[5] In January 2018, Laud petitioned for the dissolution of her marriage to Sam. In its ensuing decree of dissolution, the court equally divided the marital estate between Laud and Sam. In doing so, the court ordered that the twenty acres be awarded to Laud. The dissolution court accepted Laud's testimony that the twenty acres had a value of approximately $29,000 as well as her testimony that there existed a lien of unknown value on the land, which Laud testified to the dissolution court that she would "pay" if the court awarded her the property.[2] Ex. Vol. 1, pp. 47-52, 54.

[6] Immediately prior to March 2022, Joe had paid a total of $200,124.56 in principal and interest on the loan for the forty acres. In March 2022, Laud sold her twenty acres for $410,000. From that sale, she used $109,686.17 to pay off

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[2] Although Sam appealed the decree of dissolution, his arguments on appeal were focused on the dissolution court's decision to not continue the final hearing and the court's determination of his child support obligation. *Witvoet v. Witvoet*, No. 19A-DC-178, 131 N.E.3d 190, *1 (Ind. Ct. App. July 3, 2019) (mem.). Sam did not challenge the dissolution court's valuation of the marital assets. *See id.* at *8.

the outstanding loan balance on the forty acres and to release the underlying mortgage.

[7] Laud sought to retain the remainder of her net proceeds from the sale of her land, which totaled $276,814.08. At that point, the Witvoets filed their complaint against Laud and Sam and alleged a single count of unjust enrichment. Following a bench trial, in addition to findings showing the above facts, the court found that "the parties agreed to split the costs and taxes on the property. The parties submitted some evidence of tax payments . . . . Unfortunately, the Court is not able to glean from the documents produced who actually paid . . . ." Appellant's App. Vol. 2, p. 17.

[8] The court then entered the following conclusions:

> 1. The principles of equity prohibit the unjust enrichment of the Defendants' retention of the benefit . . . without payment.
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> * * *
>
> 3. [Laud] has argued at times that the Statute of Frauds precludes recovery. However, oral contracts for the sale of land are voidable, not void[,] and such contracts may be excepted from the Statu[t]e of Frauds where, as here, there has been part performance. "The part performance doctrine is based on the rationale that equity will not permit a party who breaches an oral contract to invoke the statute of frauds where the other party has performed his part of the agreement to such an extent that repudiation of the contract would lead to an unjust or fraudulent result." Thus, based on the facts presented in this case, the statute of frauds cannot be argued as a defense.

* * *

> 5. Unjust enrichment . . . is a legal fiction invented by the common-law courts to permit a recovery where there is no contract[] but where the circumstances are such that . . . there should be a recovery as though there had been a promise. . . .

* * *

> 8. In other words, where there is no express contract, the measure of damages is under the theory of . . . unjust enrichment.

Id. at 18-21 (citations omitted). The court further concluded that Laud and Sam had been "unjustly enriched at the expense of the [Witvoets]" because the Witvoets had continuously made "all of the payments on the mortgage for all of the property, including the 20 acres at issue in this case[,] . . . with the exception of" Laud and Sam's contribution of $27,942.10. *Id.* at 18.

[9] Accordingly, the court calculated that, of the $200,124.56 in payments made by the Witvoets, Laud and Sam owed them $74,095.19. However, as Laud had paid off the entire loan balance following the sale of her twenty acres, Laud and Sam's balance due to the Witvoets was reduced to $19,251.11 for payments made by the Witvoets "in excess of their one-half obligation . . . ." *Id.* at 22. The court also concluded that the Witvoets were "entitled to an equal share in the increase in the value of the property, which is one-half of the net proceeds from the sale," as their payments on the loan avoided foreclosure. *Id.* at 23.

[10] In all, the court directed Laud to pay $157,658.15 to the Witvoets. The court further directed that Laud retain the remainder of her net sale proceeds, or $119,128.93. Finally, the court ordered that Sam was not obligated to pay any amounts owed to the Witvoets and that, instead, the Witvoets were to be paid "out of the proceeds" of Laud's sale of her twenty acres. *Id.* at 24.

[11] This appeal ensued.

Standard of Review

[12] Laud appeals the trial court's judgment for the Witvoets. The trial court entered its judgment following a bench trial and supported its judgment with findings of fact and conclusions thereon. In such appeals, we review the court's judgment under our clearly erroneous standard. *Jones v. Gruca*, 150 N.E.3d 632, 640 (Ind. Ct. App. 2020), *trans. denied*. "We 'neither reweigh evidence nor judge witness credibility.'" *Id.* (quoting *R.L. v. Ind. Dep't of Child Servs. & Child Advocates, Inc.*, 144 N.E.3d 686, 689 (Ind. 2020)). Rather, a judgment is clearly erroneous only when there are no record facts that support the judgment or if the court applied an incorrect legal standard to the facts. *Id.*

1. The trial court did not find that Laud and the Witvoets had entered into a contract.

[13] On appeal, Laud first presents various arguments based on the premise that the trial court found that she and the Witvoets had entered into a contract. *See* Appellant's Br. at 20-22, 25-26. Laud's premise is based on the trial court's finding that "the parties *agreed* to split the costs and taxes on the property." *See*

Appellant's App. Vol. 2, p. 17 (emphasis added). Laud also asserts that the trial court's conclusion number 3, which rejected her statute-of-frauds defense, likewise concluded that the parties had entered into a contract.

[14] We do not agree with Laud's reading of the trial court's findings and conclusions. While the trial court found that the parties had "agreed" to split some costs, that finding is not equivalent to finding that there had been "an offer, acceptance, consideration, and a manifestation of mutual assent . . . to all essential elements or terms" between the parties, which is required to establish the existence of a contract. *Troutwine Ests. Dev. Co. v. Comsub Design & Eng'g, Inc.*, 854 N.E.2d 890, 897 (Ind. Ct. App. 2006), *trans. denied*. Moreover, the trial court expressly found that the doctrine of unjust enrichment applied here and that that doctrine applies "when there is no express contract." Appellant's App. Vol. 2, pp. 18, 21.

[15] Laud's reliance on the trial court's conclusion number 3 is likewise not well taken. That conclusion simply rejected her statute-of-frauds defense. In doing so, the court noted that, even if there had been an oral contract between the parties, the statute of frauds would simply render the contract "voidable, not void," and that an equitable remedy would still be appropriate on these facts. *Id.* at 18-19. Thus, we agree with the Witvoets that Laud's arguments on this issue are "confused," and we reject them accordingly. *See* Appellee's Br. at 11.

2. The trial court's judgment for the Witvoets is not a collateral attack on the dissolution decree.

[16] We thus turn to Laud's remaining arguments, which assert that the trial court's judgment for the Witvoets is a collateral attack on the dissolution decree. In particular, Laud asserts each of the following propositions:

- "By holding that the damages award was to be paid solely from the proceeds of the sale . . . , the Trial Court effectively rewrote the dissolution decree by depriving [Laud] of the property she was awarded under it."
- The "dissolution decree vested sole ownership in the twenty acres in [Laud] and said nothing . . . about how any debt associated with that property was to be distributed between [Laud] and Sam," and, "[b]ecause [Laud now] bears the entire burden of the [instant] judgment by sole virtue of her ownership of the acreage . . . , the Trial Court effectively nullified the property distribution of the decree . . . ."
- The "vesting of ownership of the twenty acres resulted from no act of Joe nor Sam but of the dissolution court. Thus, . . . the Trial Court's holding that [Laud] was unjustly enriched by receiving ownership is a collateral attack upon the dissolution decree . . . ."

Appellant's Br. at 23-25, 27-28.

[17] Laud's arguments on this issue are not supported by cogent reasoning. First, Laud does not attempt to explain how the Witvoets, nonparties to the dissolution proceeding, can collaterally attack the dissolution decree. Indeed, the trial court holding here that Laud and not Sam was responsible for paying the judgment to the Witvoets would appear to be out of respect for the dissolution court's judgment, not contrary to it.

[18] Second, Laud disregards her testimony to the dissolution court that she knew of a lien in an unknown amount on the twenty acres and that she would "pay" the lien if the dissolution court awarded her the property, which of course the dissolution court did. Ex. Vol. 1, pp. 47-52, 54. Yet the only post-dissolution payment she made on the lien was to satisfy it in full once she obtained the sale proceeds in 2022. In the meantime, it was the Witovets who kept her property out of foreclosure by paying her share of the lien payments on the forty acres, which, in turn, allowed Laud's property to accrue in value and allowed Laud to reap the benefit of that accrued value through her sale. Nothing in that sequence of events or in the trial court's judgment for the Witovets deprived Laud of her property under the dissolution decree.

[19] Third, Laud appears to conflate her claim to title of the twenty acres under the dissolution decree with the Witvoets payment on the lien that encumbered the property. She makes no cogent attempt to explain how preventing the property from going into foreclosure due to the lien is relevant to her award of title in the dissolution decree.

[20] Laud's arguments on this issue are without merit and not well-taken. Accordingly, we reject them, and we affirm the trial court's judgment for the Witvoets.

Conclusion

[21] For all of these reasons, the trial court's judgment is affirmed.

[22] Affirmed.

Tavitas, J., and Weissmann, J., concur.

ATTORNEY FOR APPELLANT

Adam J. Sedia
Johnson & Bell, P.C.
Crown Point, Indiana

ATTORNEY FOR APPELLEES

D. Eric Neff
Law Offices of D. Eric Neff, P.C.
Crown Point, Indiana